IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2067 OF 2005

WITH

WRIT PETITION NO. 2069 OF 2005

Kamal M. Morarka .... Petitioner.

vs.

Central Bank of India & Ors. .. Respondents.

Mr. H. Thakkar, Sr. Adv. i/by Mahesh Jani & Co. for petitioner.

Mr. G.R. Joshi i/by Mula & Mulla & C.B.C. for Respondents.

..

Coram: J.N. PATEL &,

A.A. SAYED, JJ.

Date: 23RD APRIL, 2007.

P.C.

. Heard.

2. This Court made a specific query from the petitioner whether the petitioner is ready to deposit 75% of the dues as required under the statute in order

to maintain his appeal. The petitioner's counsel states that it is not possible.

3. This query was put to the learned counsel for the petitioner when this Court wanted to know what are the peculiar facts and circumstances of the case which entitles him for any relaxation. It is submitted that the petitioner is guarantor and that the liquidator has sold the property which was the subject matter of mortgage and, therefore, the petitioner is entitled to be heard in his appeal without making any deposit. In so far as the first ground is concerned, that cannot be a peculiar fact and circumstance. So far as the second ground contended by the learned counsel for the petitioner is concerned, the petitioner can always seek a set off in the matter at the time of hearing of the appeal if the secured creditor has received any sum of money against his dues from the official liquidator.

4. We, therefore, dispose of these two petitions with a direction that in case the petitioner deposits 75% of the amount due and payable as required under the statute with the DRAT within four weeks from today, the order would stand quashed and set aside and the DRAT would proceed to hear the appeal on merits. On failure of the petitioner to comply with this direction, our order restoring the appeal which is subject to the condition of depositing 75% of the dues would stand recalled without any further reference to the Court.

5. Both the writ petitions stand disposed of accordingly. No order as to costs.

(J.N. Patel, J.)

(A.A. Sayed, J.)